

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ANTHONY PAPAPIETRO and ROCCO
PAPAPIETRO,

Plaintiffs,

v.

POPULAR MORTGAGE SERVICING
COMPANY, LITTON LOAN SERVICING
COMPANY and OCWEN LOAN
SERVICING COMPANY,

Defendants.

: Civil Action No. 1:13-cv-2433-SLT-RML

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: **ANSWER OF DEFENDANTS**

: **LITTON LOAN SERVICING, LP AND**

: **OCWEN LOAN SERVICING, LLC**

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Defendants Litton Loan Servicing, LP (improperly plead as “Litton Loan Servicing Company”) (hereinafter “Litton”) and Ocwen Loan Servicing, LLC (improperly pled as “Ocwen Loan Servicing Company”) (hereinafter “Ocwen”) (together, “Responding Defendants”), by their attorneys, Duane Morris LLP, hereby respond to the Complaint of plaintiffs Anthony Papapietro and Rocco Papapietro (hereinafter, “Plaintiffs”) as follows:

AS TO JURISDICTION AND VENUE

1. Denied. After a reasonable investigation, Responding Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and they are denied.

2. Denied. After a reasonable investigation, Responding Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and they are denied.

3. Denied as stated.

4. Admitted.

5. Admitted.

6. Denied as stated.

7. The allegations in this paragraph constitute a conclusion of law to which no response is required. Insofar as a response is required, Responding Defendants deny the allegations in this paragraph.

8. Responding Defendants admit that Plaintiffs assert that the amount in controversy exceeds \$75,000, but reserve their right to challenge such assertion in the course of this proceeding.

AS TO OPERATIVE FACTS

9. Denied. After a reasonable investigation, Responding Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and they are denied.

10. The allegations in this paragraph constitute a conclusion of law to which no response is required. Insofar as a response is required, Responding Defendants deny the allegations in this paragraph.

11. The allegations in this paragraph constitute a conclusion of law to which no response is required. Insofar as a response is required, Responding Defendants deny the allegations in this paragraph.

12. The allegations in this paragraph constitute a conclusion of law to which no response is required. Insofar as a response is required, Responding Defendants deny the allegations in this paragraph.

AS TO POPULAR MORTGAGE SERVICING INC.

13. Admitted.

14. Admitted.

15. Denied. After a reasonable investigation, Responding Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and they are denied.

16. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

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AS TO POPULAR SUMMARY

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AS TO LITTON LOAN SERVICING, LP

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87. Denied as stated.

88. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

89. Denied. After a reasonable investigation, Responding Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph and they are denied.

90. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

91. Denied. After a reasonable investigation, Responding Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in the first sentence of this paragraph and they are denied. The allegations in the second sentence of this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in the second sentence of this paragraph as are consistent with such documents, and deny so much of the allegations in the second sentence of this paragraph as are inconsistent with such documents.

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AS TO LITTON SUMMARY

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AS TO OCWEN LOAN SERVICING COMPANY

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148. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

149. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

150. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

AS TO OCWEN SUMMARY

151. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

152. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

153. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

154. The allegations in this paragraph are based on documents that speak for themselves. Therefore, Responding Defendants admit so much of the allegations in this

paragraph as are consistent with such documents, and deny so much of the allegations in this paragraph as are inconsistent with such documents.

155. Denied.

AS TO COUNT ONE

156. Responding Defendants re-allege their foregoing responses as if set forth in length herein.

157. Denied.

158. Denied.

AS TO COUNT TWO

159. Responding Defendants re-allege their foregoing responses as if set forth in length herein.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

AS TO COUNT THREE

164. Responding Defendants re-allege their foregoing responses as if set forth in length herein.

165. Denied.

166. Denied.

AS TO COUNT FOUR

167. Responding Defendants re-allege their foregoing responses as if set forth in length herein.

168. Denied.

169. Denied.

170. Denied.

171. Denied.

AS TO COUNT FIVE

172. Responding Defendants re-allege their foregoing responses as if set forth in length herein.

173. Denied.

174. Denied.

AS TO COUNT SIX

175. Responding Defendants re-allege their foregoing responses as if set forth in length herein.

176. Denied.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

AS TO COUNT SEVEN

182. Responding Defendants re-allege their foregoing responses as if set forth in length herein.

183. The allegations made in this paragraph constitute conclusions of law to which no response is required. Insofar as a response is required, Responding Defendants deny the allegations.

184. The allegations made in this paragraph constitute conclusions of law to which no response is required. Insofar as a response is required, Responding Defendants deny the allegations.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

189. Denied.

190. Denied.

191. Denied.

192. Responding Defendants acknowledge that Plaintiffs have demanded a jury trial on all issues so triable, but reserve all rights to contest the request.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted. Plaintiffs' Complaint and each cause of action therein fails to state facts sufficient to constitute a cause of action against Responding Defendants for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims against Responding Defendants are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims against Responding Defendants are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Responding Defendants are barred by the doctrine of estoppel and waiver.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Responding Defendants are barred because Responding Defendants acted within their rights under law and contract.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages, if any, and therefore any recovery awarded to Plaintiffs against Responding Defendants should be barred or reduced by such amount.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole, or in part, by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' alleged damages, if any, were proximately caused by the conduct of parties other than Responding Defendants, and recovery is therefore barred or proportionately reduced accordingly.

NINTH AFFIRMATIVE DEFENSE

If Plaintiffs' alleged damages were proximately caused by the conduct of more than one party, any recovery must be apportioned as to the fault of each.

TENTH AFFIRMATIVE DEFENSE

Responding Defendants cannot be held liable under state laws which are inconsistent with or otherwise preempted by the National Bank Act, and the regulations promulgated thereunder.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Ocwen are barred because Ocwen is a holder in due course of Plaintiffs' promissory note.

TWELFTH AFFIRMATIVE DEFENSE

Any alleged damages sustained by Plaintiffs were, at least in part, caused by their actions and resulted from their own negligence, which equaled or exceeded any alleged negligence or wrongdoing by Responding Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages are the result of acts or omissions committed by Plaintiffs.

FOURTEENTH AFFIRMATIVE DEFENSE

Responding Defendants deny that Plaintiffs are entitled to recover punitive damages based on the allegations set forth in the Complaint. Responding Defendants further state that the imposition of punitive damages violates the provisions of the due process clause, equal protection clause, excess fines clause and other clauses contained in the Constitutions of the United States, New Jersey and other states. Further, the correct burden of proof for the imposition of punitive damages is by "clear and convincing evidence" and/or "beyond a

reasonable doubt.” Any lesser standard violates the provisions of the due process clause of the Constitutions of the United States, New Jersey and other states.

FIFTEENTH AFFIRMATIVE DEFENSE

Responding Defendants’ investigation of the allegations in this Complaint continues. Therefore, Responding Defendants expressly reserve the right to add additional affirmative defenses to this Answer as they may become known during the course of their investigation.

PRAYER FOR RELIEF

Wherefore, Responding Defendants demand judgment in their favor dismissing all claims with prejudice, together with all costs fees and expenses as allowed by law.

Dated: June 17, 2013

DUANE MORRIS LLP

By: /s/ Daniel Ginzburg
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Litton Loan Servicing, LP and
Ocwen Loan Servicing, LLC

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ANTHONY PAPAPIETRO and ROCCO
PAPAPIETRO,

Plaintiffs,

v.

POPULAR MORTGAGE SERVICING
COMPANY, LITTON LOAN SERVICING
COMPANY and OCWEN LOAN
SERVICING COMPANY,

Defendants.

: Civil Action No. 1:13-cv-2433-SLT-RML

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CERTIFICATE OF SERVICE

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I, Daniel Ginzburg, an attorney duly admitted to practice before the courts of the State of New York, hereby declare pursuant to 28 U.S.C. § 1746 that on June 17, 2013 I served the Answer and Affirmative Defenses of Litton Loan Servicing, LP and Ocwen Loan Servicing, LLC on the following:

Irina Kushel, Esq.
Kushel Law Group
299 Broadway, Suite 1405
New York, NY 10007
Counsel for Plaintiffs

via ECF.

“I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 17, 2013.

/s/ Daniel Ginzburg

DANIEL GINZBURG